Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 792 of 2001 (S/B)

A.K. Dhar S/o late Raj Kishore Dhar,
Resident of 15/2, Sewak Ashram Road,
Dehradun.

..... Petitioner

Versus

1. State of U.P. through Principal Secretary, Medical Health and Family Welfare, Utar Pradesh, Lucknow.

2. Director General, Family Welfare, Jagat Narain Road, Lucknow.

3. Chief Medical Officer, Saharanpur.

4. State of Uttaranchal through Secretary, Medical Health and Family Welfare, Uttaranchal, Dehradun.

5. Senior Treasury Officer, Dehradun.

..... Respondents

Sri V.K. Bisht Senior Advocate, learned counsel for the petitioner.
Smt. Beena Pandey, learned Standing Counsel for the respondents/State of U.P.
Learned Standing counsel for the respondents/State of Uttaranchal

Date: February 28, 2006.

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

(Per: Hon'ble P.C. Verma, J.)

This petition has been filed by the petitioner seeking the following reliefs:-

(i) To issue writ, direction or order in the nature of mandamus directing the respondents to release the duly sanctioned commuted pension of the petitioner amounting Rs. 2,38,488/- alongwith 18% interest w.e.f. 29.4.2000 till the date of actual payment.

(ii) To issue writ, direction or order in the nature of mandamus directing the respondents to refund the amount of reduction of pension in lieu of commutation of pension (which has been done from 28.07.2000 till the payment of commuted pension is made to the petitioner) alongwith 18% interest.

(iii) To issue writ, direction or order in the nature of mandamus directing the respondents to make payment of Retiring Travelling Allowance Bill amounting Rs. 3594/- to the petitioner at the earliest.

(iv) To issue suitable writ, direction or order directing the respondents to award heavy compensation to the petitioner for inflicting financial distress, harassment, mental torture and debarring him from specialist medical treatment with his own hard earned money.

By way of amendment the petitioner also incorporated the following relief on 3.6.2004:-

(i-a) To issue writ or order in the nature of certiorari by quashing the order dated 01.05.2002 (Annexure No. 7) passed by respondent No. 3.

2. Brief facts of the case are that the petitioner was retired as District Administrative Officer from the office of Chief Medical officer, Saharanpur, U.P.. Pension Payment Order/Gratuity/Pension Commutation Order was issued to the petitioner by Financial Controller, Family Welfare Directorate, Lucknow, vide order dated 20.4.2000 (Annexure No. 1 to the writ petition). In the aforesaid order it was mentioned that deduction of Rs. 1900/- per month will be made after payment of the commuted amount or after three months, whichever is earlier. On the asking of respondent No.3/ Chief Medical Officer, Saharanpur the respondent No.5/Treasury Officer, Dehradun started deduction of Rs. 1900/- from pension w.e.f. 29.7.2000 inspite of the fact that commuted pension was not paid to the petitioner. It is alleged that the said act of the respondents is arbitrary, unreasonable and illegal. It is also alleged that the then Chief Medical Officer, Saharanpur Dr. Suresh Kumar was personally biased against the petitioner and this fact is clear from the letter dated 10/11.01.2001 of respondent No.3/Chief Medical Officer, Sharanpur by which he has informed the Director (Administration), Health Services, U.P., Lucknow that payment of commuted pension of the petitioner was withheld under the verbal order of the then Chief Medical officer , Saharanpur. The petitioner also alleged that payment of commuted pension of the petitioner has been withheld due to malafide and illegal action of earlier Chief Medical Officer, Saharanpur Dr. Suresh Kumar. The petitioner was also not served any show case notice for withholding commuted pension.

3. By way of amendment in writ petition the petitioner also alleged that after filing of present writ

petition the respondent No.3/Chiefr Medical Officer, Saharanpur, vide order dated 16.08.2001/12.09.2001 directed for enquiry in respect of alleged irregular payment of arrears to Smt. Pushpa Gupta wife of late Dr. G.K. Gupta. Enquiry report was submitted by Enquiry Officer/Deputy Chief Medical Officer (Karmik), Saharanpur on 26.09.2001. Thereafter the respondent No.3/Chief Medical Officer, Saharanpur passed an order on 01.5.2002 withholding Rs. 1,04,919/- from the commuted pension of the petitioner. It is alleged that the Enquiry Officer did not provide opportunity to the petitioner to put up his case and conducted enquiry behind the back of the petitioner. The prior sanction of the Governor of the State was also not taken withholding commuted pension of the petitioner.

4. The respondent Nos. 1, 2 & 3 filed their counter affidavit jointly stating therein that the petitioner was found responsible for excess payment after making due inquiry in this behalf and the excess payment is being recovered form the petitioner as well as from Sri Viresh Chandra Gupta, who was posted as Senior clerk under the control of respondent No.3/Chief Medical Officer, Saharanpur at the relevant time. The respondents denied the contents of para 26 & 27 of the writ petition and stated that all the payment payable to the petitioner has been paid to him except the amount withheld on account of liability of the petitioner for making the excess payment to Smt. Pushpa Gupta. The respondent No.5 contended that the petitioner is being paid pension since 16.9.2000 in pursuance of he order dated 29.4.2000 of the Finance Controller, Medical Health and Family Welfare and since then he has been

paid regularly his pension amount and the amount of retiring gratuity and commutation has been paid by the Saharanpur Treasury as per endorsement made in Pension Payment Order dated 29.4.2000.

5. We heard the learned counsel for the parties and perused the record. The Learned counsel for the petitioner contended that to withhold the commuted pension the prior sanction of the Governor of the State is necessary but in the case of the petitioner no prior sanction was obtained from the Governor of the State and the order dated 01.5.2002 passed by respondent No.3/Chief Medical Officer is in violation of Regulations. 351-A of the Civil Service Regulations. It is also contended that the enquiry was conducted after the retirement of the petitioner. The episode of the enquiry came to the knowledge of petitioner only after copy of counter affidavit was received i.e. after lapse of 2 years 11 months from the date of retirement. No information about the same or opportunity of hearing was given to the petitioner and it was conducted ex parte. The petitioner was illegally found guilty for making payment of arrears to Smt. Pushpa Gupta. It is also contended that part payment of Rs. 1,33,565/- was paid one year after filing of the writ petition. The petitioner is entitled to get interest at the rate of 18% per annum on the delayed payment.

6. In this case it is pertinent to note that the petitioner was retired from service as District Administrative Officer on 31.5.1999. The writ petition was filed against withholding of commuted pension on 22.07.2001. The inquiry was ordered in the matter on 16.08.2001/12.09.2001 by the respondent No.3/Chief

Medical Officer, Saharanpur, which came to the knowledge of the petitioner only after copy of counter affidavit was received in the writ petition i.e. after about 2 years. On 01.05.2002 on the basis of report submitted by the Inquiry Officer he passed the order withholding Rs. 1,04,919/- from the commuted pension of the petitioner ignoring the provisions contained in **Regulation 351-A of the Civil Service Regulations.** Regulation 351-A of the said Regulations provides that pension or any part of pension can be withheld only when in a departmental proceedings an employee is found guilty provided that such departmental proceedings, if not instituted while the officer was on duty either before retirement of during re-employment, shall not be instituted save with the sanction of the Governor. For the sake of inconvenience Regulation 351-A aforesaid is reproduced as under:-

> "351-A. The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioners found in departmental or judicial proceedings to have been guilty of grave mis-conduct, or to have caused pecuniary loss to Government by mis-conduct or negligence, during his service, including service rendered on re-employment after retirement:
>
> Provided that-
>
> (a) such departmental proceedings, it not instituted while the officer was on duty either before retirement or during re-employment-
>
> (i) Shall not be instituted save with the sanction of the Governor,

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings, and

(iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made,

(b) judicial proceedings, if not instituted while the officer was on duty either before retirement or during re-employment shall have been instituted in accordance with sub-clause (ii) of clause (a), and

(c) the Public Service Commission, U.P., shall be consulted before final orders are passed.

7. A perusal of the record shows that there was no prior sanction of the Governor of State for withholding the commuted pension which is clear cut violation of the Regulation. The respondents do not say anywhere that prior sanction of the Governor of the State was obtained to withhold the commuted pension. The respondents also did not rebut the contention of the petitioner that he was provided sufficient opportunity to put up his case during the course of inquiry or he was served copy of inquiry report. The order dated 01.5.2002 was passed ex parte. In the supplementary rejoinder affidavit the petitioner stated that the Additional Director of Medical Health, Meerut/ Sharanpur Region also submitted his report on 26.07.2001 in the matter stating therein that there was no inconsistency in payment of arrears to Smt. Pushpa Gupta wife of late Dr. G.K. Gupta.

8. In view of above discussion, it is clear that the action was taken by the respondents against the

petitioner withholding the commuted pension dehors the rules which cannot be allowed to stand and the impugned orders are liable to be quashed.

9. The petition is allowed. Writ of certiorari is issued to quash the impugned order dated 01.05.2002. All the dues to the petitioner shall be cleared in accordance with law. However, it is made clear that the petitioner shall not be entitled to get interest on the dues.

(B.C. Kandpal, J.) **(P.C. Verma,J.)**
28.02.2006 **28.02.2006**

P.Singh